

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 59-62, 64-68 and 70-73 remain pending in this application. No claims have been amended.

In the outstanding Office Action, Claims 59-62, 64-68 and 70-73 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miura et al. (U.S. 2002/0028004 A1, hereinafter Miura) in view of Marchitto et al. (U.S. 6,889,075 B2, hereinafter Marchitto).

Claims 59 and 65 recite, in part, “a shield which prevents the near infra-red light scattered in a shallow portion of the body from reaches the detecting unit.” Claim 71 recites similar subject matter in method format. It is respectfully submitted that these features are neither disclosed by nor rendered obvious by Miura, Marchitto or the combination thereof.

The Office Action correctly recognizes that “Miura does not disclose...a shield which prevents the near infra-red light scattered in a shallow portion of the body from reaches the detecting unit.”

The Office Action subsequently asserts that:

Marchitto, in the same field of endeavor, teaches...a shield which prevents the near infra-red light scattered in a shallow portion of the body from reaches the detecting unit (see fig. 5, col. 6, lines 10-61; imaging scheme may benefit from using a Q-switched Nd:YAG laser (1064 nm), as such lasers are relatively inexpensive and fortuitously blood absorbs strongly at 532 nm. The 532 nm scattered information could be collected in synchrony with the pulsed Nd:YAG laser).

Applicant respectfully disagrees.

Regarding EXAMPLE 5 and FIG. 5, Marchitto states:

For practical reasons, such an imaging scheme may benefit from using a Q-switched Nd:YAG laser (1064 nm), as such lasers are relatively inexpensive and fortuitously blood absorbs strongly at 532 nm. The 532 nm scattered information could be collected in synchrony with the pulsed Nd:YAG laser. On

alternate stands, white light or infrared images could be captured. Comparison of the two could be used to determine the location of the blood (or other light absorbing/scattering chromophore) in the field of U.¹

It is respectfully submitted that the above quoted section of Marchitto does not describe a shield which prevents the near infra-red light scattered in a shallow portion of the body from reaching the detecting unit as asserted in the Office Action. Furthermore, there is no shield shown in Marchitto FIG. 5. Rather, the above quoted portion of the reference is describing the absorption of the laser light by the blood causing the stimulation thereof. The above quoted portion is further describing the scattering of that near-infra-red light.

Therefore, Marchitto does not describe the features of Claims 59, 65 and 71 quoted above.

It is respectfully submitted that Claims 60-62, 64, 66-68, 70, 72 and 73 are patentable at least for the reasons argued above with regard to the claims from which they depend.

Accordingly, it is respectfully requested that the rejection of Claims 59-62, 64-68 and 70-73 be reconsidered and withdrawn, and that Claims 59-62, 64-68 and 70-73 be found allowable.

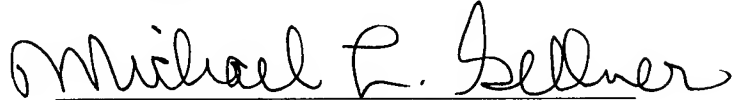
Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

¹ Column 6, lines 51-61.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below-listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.

A handwritten signature in black ink, reading "Michael L. Gellner". The signature is written in a cursive style with a horizontal line underneath the name.

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